

**THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 08-162

ORDER OF NOTICE

On December 12, 2008, Comcast Phone of New Hampshire, LLC d/b/a Comcast Digital Phone (Comcast) filed with the New Hampshire Public Utilities Commission (Commission) a petition for arbitration of rates, terms and conditions of interconnection with Kearsarge Telephone Company d/b/a TDS Telecom, Merrimack County Telephone Company d/b/a TDS Telecom and Wilton Telephone Company, Inc. d/b/a TDS Telecom (collectively, TDS) pursuant to section 252(b) of the Communications Act of 1934, as amended (Telecom Act), and Puc rules 101, 103, and 203 (Comcast Petition).

On January 9, 2009, TDS filed an answer to Comcast's petition (TDS Response), attaching prefiled testimony of Mr. Douglas Duncan Meredith, and a first set of data requests directed to Comcast.

The single issue presented for arbitration before this Commission is TDS's proposed inclusion of a provision in the interconnection agreement that the agreement become effective:

...only if (1) the Commission has determined in an arbitration or other appropriate proceeding that COMCAST is a telecommunications carrier in the state of [New Hampshire] entitled to interconnection with TDS TELECOM pursuant to Section 251 of the Act and that the services COMCAST will be providing by way of the interconnection are telecommunications services...

Comcast Petition, Exh. C at 14. Thus, the disputed clause, upon which the agreement as a whole is contingent, seeks a Commission determination regarding Comcast's qualification as a

telecommunications carrier to interconnect with an incumbent local exchange carrier (ILEC) under section 251.

The Commission has jurisdiction over the petition for arbitration pursuant to section 252 of the Telecom Act. Section 252 sets forth specific deadlines for each step in an arbitration proceeding, including the filing of a petition and conclusion of the arbitration. Comcast timely filed its petition on December 12, 2009. Thus, in accordance with the provisions of section 252, arbitration in this proceeding must be concluded by April 5, 2009.

The filings raise, *inter alia*, issues related to (1) whether and to what extent Comcast qualifies as a telecommunications carrier entitled to request an interconnection agreement under section 251 of the Telecom Act; (2) whether TDS may deny interconnection to a carrier who provides, in addition to traditional telecommunications services, wholesale service to an affiliate providing cable telephony services; (3) whether the issues raised are appropriate for arbitration; and (4) if not, whether the issues raised are best resolved through briefing and declaratory judgment, or some other alternative proceeding. In the event there is any dispute with respect to the initial discovery requests filed by TDS, we will appoint a hearings examiner to hear and resolve such disputes directly following the prehearing conference. A technical session shall be held following the prehearing conference and discovery hearing. Staff and parties are directed to agree on an expedited procedural schedule that would permit a Commission order by no later than April 5, 2009. Each party has the right to have an attorney represent them at their own expense.

Based upon the foregoing, it is hereby

ORDERED, that a Prehearing Conference, pursuant to N.H. Admin. Rules Puc 203.15, be held before the Commission located at 21 S. Fruit St., Suite 10, Concord, New

Hampshire on February 6, 2009 at 10:00 a.m., at which each party will provide a preliminary statement of its position with regard to the petition and any of the issues set forth in N.H. Admin. Rule Puc 203.15 shall be considered; and it is

FURTHER ORDERED, that, immediately following the Prehearing Conference, Comcast, the Staff of the Commission and any Intervenors hold a Technical Session to review the petition and allow Comcast to provide any amendments or updates to its filing; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.12, Comcast shall notify all persons desiring to be heard at this hearing by publishing a copy of this Order of Notice no later than February 2, 2009, in a newspaper with general circulation in those portions of the state in which operations are conducted, publication to be documented by affidavit filed with the Commission on or before February 6, 2009; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.17, any party seeking to intervene in the proceeding shall submit to the Commission seven copies of a Petition to Intervene with copies sent to Comcast, TDS, and the Office of the Consumer Advocate on or before February 3, 2009, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding, as required by N.H. Admin. Rule Puc 203.17 and RSA 541-A:32,I(b); and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene make said Objection on or before February 6, 2009.

By order of the Public Utilities Commission of New Hampshire this twenty-
eighth day of January, 2009.

Debra A. Howland
Executive Director

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability, should contact the Americans with Disabilities Act Coordinator, NHPUC, 21 S. Fruit St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.